IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5991 of 1999

with

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with
Special Civil Application No.5993 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgement?-Yes. : YES

2. To be referred to the Reporter or not?-No. :

3. Whether Their Lordships wish to see the fair copy of the judgement?-No. : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?-No. : NO

5. Whether it is to be circulated to the Civil Judge?-No. :

DIPAKKUMAR CHIMANLAL SHAH

Versus

STATE OF GUJARAT

Appearance:
MR JV MEHTA for Petitioner in all matters.
Ms.S. Talati, Assistant GOVERNMENT PLEADER,
for Respondent No. 1 in all matters

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 10/04/2000

ORAL JUDGEMENT

In all the three petitions, common questions of fact and law are involved and it is, therefore, appropriate to dispose them of by a common judgment.

The petitioner was doing business as proprietor of "Zalak Enterprise", near Juna Madhupura, Ahmedabad.

In Special Civil Application No.5991 of 1999, an allegation was made that on 28th of January, 1997, Supply Inspector found that a rickshaw, bearing No.GJ-1-V 5642, was driven by one Mohammad Iqbal Shaikh. In the said rickshaw, 60 tins of vegetable ghee were found, which were being taken to Kokay Biscuit, Naroda. On inquiry, except a chit, wherein 60 tins of vegetable ghee were mentioned, nothing was written. No sufficient particulars relating to the commodity in question, number of rickshaw, price for which it was sold or where it was to be sold were mentioned. The chit was also not signed. A notice was, therefore, issued to the petitioner, stating therein to show cause as to why his licence should not be cancelled, security deposit should not be forfeited and goods should not be confiscated. He was afforded an opportunity of hearing and finally, an order was passed, confiscating the commodity in question, cancelling the licence and forfeiting deposit amount. It was stated in the order that even though a number of opportunities were afforded, the petitioner did not remain present and finally, the Deputy Director of Civil Supplies, Ahmedabad, passed an order on 1st of October, 1997.

Being aggrieved by the said order, an appeal was filed which was dismissed. A revision application was also dismissed by the Government.

All the three authorities recorded a concurrent finding of fact that by not mentioning necessary details, the petitioner has committed breach of provisions of law and also violated conditions of licence. There was mala fide intention by the petitioner and that the allegation levelled against him was proved. It was also stated by the authorities that even in past, irregularities and illegalities were committed and on several occasions, even licence was cancelled.

When the petition was placed for hearing, the learned Single Judge issued notice and granted status quo. Today, I have heard the learned counsel for the

parties.

It was submitted by Mr. Mehta, learned counsel for the petitioner, that, at the most, it can be said that there was an error of a trivial or technical nature. For such an act, licence should not be cancelled. He also submitted that a person cannot be doubly punished for the same irregularity. When there was confiscation of goods and forfeiture of security deposit, no action could have been taken of cancellation of licence.

In my opinion, the contention is not well-founded. So far as confiscation of goods is concerned, the said action is in accordance with the provisions of Section 6A of the Essential Commodities Act. For such an act, the security deposit can also be forfeited. Similarly, licence can also be cancelled. When concurrent finding of fact is recorded by all the authorities that necessary particulars were not disclosed in the chit with a view to take undue advantage so that the goods can be disposed of otherwise than in accordance with law, such a finding cannot be interfered with in exercise of powers under Article 226/227 of the Constitution. I, therefore, do not see any ground to interfere with the orders. The petition deserves to be dismissed and is accordingly dismissed.

So far as Special Civil Application No.5992 of 1999 is concerned, the allegation against the petitioner was that on 24th of December, 1996, the Inspecting Officers of Dhariapur-Kazipur Zone of Ahmedabad City inspected the business premises of the petitioner and found several irregularities. It was, inter alia, alleged that there was deficit of 15 Kgs. of edible oil, 15 Kgs. of vegetable ghee, 15 Kgs. of Sarsiya Oil, 15 Kgs. of Kapasia Oil and 15 Kgs. of Soyabeen Oil, 5 litres excess in edible oil, 500 m.l. deficit in Vanaspati ghee and one litre excess in edible oil. Several opportunities were given. The petitioner did not remain present and finally, the licence was cancelled. All the authorities recorded a finding of fact that no proper explanation was put forward by the petitioner as to how there was deficit and excess in essential commodities. It was observed in the order that deficit and excess was on a large scale and even though several opportunities were given to the petitioner, he could not offer explanation and satisfy the authority as to how such deficit and excess took place. In the circumstances, an order was passed, cancelling the licence.

In my opinion, findings recorded by the authorities are findings of fact. When concurrent findings of fact are recorded by all the authorities that necessary particulars were not disclosed in the relevant books with a view to dispose of the goods otherwise than in accordance with law, such a finding cannot be interfered with in exercise of powers under Article 226/227 of the Constitution. I, therefore, do not see any ground to interfere with the orders. The petition deserves to be dismissed and is accordingly dismissed.

The allegation against the petitioner in Special Civil Application No.5993 of 1999 is that on 28th of January, 1997, the Inspecting Officers of Dhariapur-Kazipur Zone of Ahmedabad City visited the business premises of the petitioner and on physical verification, the stock of edible oil to the extent of 84961 was found as against the maximum stock which can be possessed by the petitioner to the extent of 60000 Kgs. Thus, the excess quantity was substantial, i.e. about 40% more than the permissible quantity. On the basis of the above allegation, a show cause notice was issued, opportunity of hearing was afforded, but the opportunity was not availed. The authorities held that the excess quantity was substantial, which was not reflected in the stock register. An inference was, therefore, drawn that it was done with a view to taking undue advantage of the situation. On the basis of the said finding, an order was passed, cancelling the licence, which was confirmed by the superior authorities.

In my opinion, findings recorded are findings of fact. When concurrent findings of fact are recorded by all the authorities that excess stock was possessed without mentioning it in the books with a view to seeing that the goods can be disposed of otherwise than in accordance with law, such a finding is a finding of fact. In exercise of powers under Article 226/227 of the Constitution, such finding cannot be disturbed. I, therefore, do not see any ground to interfere with the orders passed by the authorities. The petition deserves to be dismissed and is accordingly dismissed.

The resultant effect is that all the petitions deserve to be dismissed and are accordingly dismissed. Notices are discharged. Ad interim reliefs stand vacated. No order as to costs.

10th April, 2000 (C.K. Thakkar, J.)

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(apj)